

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

SENATE ENROLLED ACT No. 252

AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-4.1-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. Before ~~he makes~~ **making** the appraisal required under section 2(3) of this chapter, the county inheritance tax appraiser shall give notice of the **date**, time, and place of the appraisal, by mail, to ~~(1) each person known to have an interest in the property interests to be appraised; including the department of state revenue; and (2) any person designated by the probate court and each interested person who filed a request for notice and provided a mailing address to the county assessor.~~ **(1) each person known to have an interest in the property interests to be appraised; including the department of state revenue; and (2) any person designated by the probate court and each interested person who filed a request for notice and provided a mailing address to the county assessor.** The county inheritance tax appraiser shall appraise the property interests at the time and place stated in the notice.

SECTION 2. IC 6-4.1-5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 9. ~~(a)~~ When the county inheritance tax appraiser files an appraisal report with the probate court, the court shall give twenty (20) days notice **by mail** of the **date**, time, and place of a hearing on the report **to each interested person who filed a request for notice and provided a mailing address under section 3 of this chapter.** ~~The court shall give the notice by mail to all persons known to be interested in the resident decedent's estate; including the department of state revenue.~~

~~(b)~~ If the address of a person interested in a resident decedent's estate is unknown, the probate court shall give notice of the time and



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place of the appraisal report hearing by publication. The court shall publish the notice not less than three (3) successive weeks before the hearing in a newspaper published in the county.

SECTION 3. IC 6-4.1-5-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 11. The court shall immediately mail a copy of its determination of the fair market value of the property interests transferred by a resident decedent and the inheritance tax due as a result of the ~~decedent's~~ **person's** death to ~~all persons interested in the decedent's estate, including each interested person who filed a request for notice and provided a mailing address under section 3 of this chapter,~~ the department of state revenue, and the county treasurer.

SECTION 4. IC 29-1-2-7, AS AMENDED BY P.L.9-1999, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 7. (a) For the purpose of inheritance (on the maternal side) to, through, and from a child born out of wedlock, the child shall be treated as if the child's mother were married to the child's father at the time of the child's birth, so that the child and the child's issue shall inherit from the child's mother and from the child's maternal kindred, both descendants and collaterals, in all degrees, and they may inherit from the child. The child shall also be treated as if the child's mother were married to the child's father at the time of the child's birth, for the purpose of determining homestead rights and the making of family allowances.

(b) For the purpose of inheritance (on the paternal side) to, through, and from a child born out of wedlock, the child shall be treated as if the child's father were married to the child's mother at the time of the child's birth, if one (1) of the following requirements is met:

- (1) The paternity of a child who was at least twenty (20) years of age when the father died has been established by law in a cause of action that is filed during the father's lifetime.
- (2) The paternity of a child who was less than twenty (20) years of age when the father died has been established by law in a cause of action that is filed:
 - (A) during the father's lifetime; or
 - (B) within five (5) months after the father's death.
- (3) The paternity of a child born after the father died has been established by law in a cause of action that is filed within eleven (11) months after the father's death.
- (4) The putative father marries the mother of the child and acknowledges the child to be his own.
- (5) The putative father executes a paternity affidavit as set**



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forth in IC 16-37-2-2.1.

(c) The testimony of the mother may be received in evidence to establish such paternity and acknowledgment, but no judgment shall be made upon the evidence of the mother alone. The evidence of the mother must be supported by corroborative evidence or circumstances.

(d) If paternity is established as described in this section, the child shall be treated as if the child's father were married to the child's mother at the time of the child's birth, so that the child and the child's issue shall inherit from the child's father and from the child's paternal kindred, both descendants and collateral, in all degrees, and they may inherit from the child. The child shall also be treated as if the child's father were married to the child's mother at the time of the child's birth, for the purpose of determining homestead rights and the making of family allowances.

SECTION 5. IC 29-1-7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. **(a)** After the death of a ~~testator~~ **person**, the person having custody of ~~his~~ **the decedent's** will:

(1) may; or

(2) shall, upon written demand by the personal representative or upon court order;

deliver ~~it~~ **the will** to the court which has jurisdiction of the administration of ~~his~~ **the decedent's** estate.

(b) A verified written application may be filed by or on behalf of any interested person or any personal representative named, in any court having jurisdiction of the administration of the decedent's estate for an order of that court against any person who is alleged to have the custody of the will of the said person so dying, to produce said will before said court at the time fixed by said court in order that said will may be probated. Upon the filing of said application, the court shall cause notice to issue of the filing thereof to the person alleged in said petition to have the custody of said will. If, upon the hearing of said application, the court shall find the allegations thereof to be true, the court shall enter an order directing the person so named in said application to deliver said will within the time fixed in said order, to such person as the court shall designate, so that the same may be offered for probate.

(c) If the person against whom said order is issued shall, after said order shall have been served upon him, fail without just cause to so produce said will at the time so fixed therefor, he shall be guilty of contempt of court and may by said court be committed to the jail of the county in which said court is located, there to remain until he produces said will, or until said order to produce shall have been vacated, and



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said person so found guilty of contempt shall also be liable to any person interested in the probate of said will for all damages he may sustain by the failure of said person to comply with said order.

SECTION 6. IC 30-4-3-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 29. (a) A trustee may be removed as follows:

(1) By the court.

(2) By the person, if any, who by the terms of the trust is authorized to remove the trustee.

(3) Unless the terms of the trust instrument provide otherwise, by a beneficiary of the trust whose petition is granted by the court under subsection (e).

(b) Upon petition by the trustee the court may, in its discretion, permit the trustee to resign if the trustee's resignation will not be detrimental to the trust.

(c) Unless a successor trustee is named in or selected according to a method prescribed in the terms of the trust, the court may appoint a trustee to replace a removed, resigned, or deceased trustee and, on petition by a party to the trust, may appoint a co-trustee if to do so would facilitate more effective administration of the trust. The court shall inquire into the qualifications of a proposed successor trustee and give due consideration to the intentions of the settlor of the trust before appointing a successor trustee.

(d) For good cause shown, the court may at any time appoint a temporary trustee for such period of time, and to perform such duties, as the court may direct.

(e) This subsection applies only to a trust executed after June 30, 1996. A beneficiary of a trust may petition the court for the removal of a corporate trustee if there has been a change in control of the corporate trustee after the date of the execution of the trust. The court may remove the corporate trustee if the court determines the removal is in the best interests of all the beneficiaries of the trust. For purposes of this subsection a change in control of the corporate trustee occurs whenever a person or group of persons acting in concert ~~acquire~~ **acquires** the beneficial ownership of an aggregate of at least twenty-five percent (25%) of the outstanding shares of voting stock of:

(1) a trustee; or

(2) a corporation controlling a trustee;

after June 30, 1996.

SECTION 7. IC 30-5-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. (a) An attorney in fact has a power granted under this chapter if the power of attorney incorporates

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the power by:

- (1) referring to the descriptive language in sections 2 through 19 of this chapter; or
- (2) citing to a specific section of sections 2 through 19 of this chapter.

(b) Reference in a power of attorney to the descriptive language in sections 2 through 19 of this chapter shall be construed as though the entire section is set out in full in the power of attorney.

(c) If powers are similar or overlap, the broadest power controls.

(d) A power of attorney may ~~modify any power incorporated by reference~~ **in writing delete from, add to, or modify in any manner a power incorporated by reference, including the power to make gifts under section 9 of this chapter.**

SECTION 8. IC 30-5-6-4, AS AMENDED BY P.L.252-2001, SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4. (a) The attorney in fact shall keep complete records of all transactions entered into by the attorney in fact on behalf of the principal:

- (1) for six (6) years after the date of the transaction; or**
- (2) until the records are delivered to the successor attorney in fact;**

whichever occurs first.

(b) Except as otherwise stated in the power of attorney, the attorney in fact is not required to render an accounting. The attorney in fact shall render a written accounting if an accounting is ordered by a court, requested by the principal, a guardian appointed for the principal, or, upon the death of the principal, the personal representative of the principal's estate, or an heir or legatee of the principal.

(c) An attorney in fact shall deliver an accounting requested under subsection (b) to:

- (1) the principal;
- (2) a guardian appointed for the principal;
- (3) the personal representative of the principal's estate;
- (4) an heir of the principal after the death of the principal; or
- (5) a legatee of the principal after the death of the principal;

not later than sixty (60) days after the date the attorney in fact receives the written request for an accounting. **In the event of the principal's death, an accounting under this subsection must be requested not later than nine (9) months after the date of the principal's death.**

(d) Not more than one (1) accounting is required under this section in each twelve (12) month period unless the court, in its discretion, orders additional accountings.

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(e) If an attorney in fact fails to deliver an accounting as required under subsection (c), the person requesting the accounting may initiate an action in mandamus to compel the attorney in fact to render the accounting. The court may award the attorney's fees and court costs incurred under this subsection to the person requesting the accounting if the court finds that the attorney in fact failed to render an accounting as required under this section without just cause.

SECTION 9. IC 30-5-6-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 4.5. (a) An attorney in fact has the authority to employ persons, including:**

- (1) attorneys;**
- (2) accountants;**
- (3) investment advisers; and**
- (4) agents;**

to assist the attorney in fact in the performance of the attorney in fact's fiduciary duties. Any reasonable costs incurred with regard to services rendered for the benefit of the principal shall be paid from the principal's asset holdings.

(b) Except as provided in subsection (c), if an accounting is requested as set forth in section 4 of this chapter, costs incurred by the attorney in fact:

- (1) to defend the actions of the attorney in fact on behalf of the principal with regard to the preparation of the accounting; and**
- (2) to defend any other actions of the attorney in fact on behalf of the principal;**

shall be paid from the principal's asset holdings.

(c) If a court determines that an attorney in fact:

- (1) breached the attorney in fact's fiduciary duty or obligation to the principal; or**
- (2) was engaged in self-dealing activities with the principal's asset holdings;**

the court may determine that the attorney in fact is responsible for the payment of the costs incurred under subsection (b).

SECTION 10. IC 30-5-9-9, AS AMENDED BY P.L.252-2001, SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 9. (a) Except as provided in subsection (b), a person refusing who, not more than three (3) business days after receiving a power of attorney, refuses to accept the authority of an attorney in fact to exercise a power granted under a power of attorney is liable to the principal and to the principal's heirs, assigns, and the**

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personal representative of the estate of the principal in the same manner as the person would be liable had the person refused to accept the authority of the principal to act on the principal's own behalf. In any action brought in court to either force the acceptance of the authority of the attorney in fact or pursue damages as a result of the person's refusal to accept the authority of an attorney in fact, the person found liable for refusing to accept the authority of an attorney in fact shall pay the following:

- (1) Three (3) times the amount of the actual damages.
- (2) The attorney's fees of the person bringing the action to court.
- (3) Prejudgment interest on the actual damages from the date the person refused to accept the authority of the attorney in fact.

(b) A person refusing to accept the authority of an attorney in fact to exercise a power granted under a power of attorney is not liable under subsection (a) if:

- (1) the person has actual notice of the revocation of the power of attorney before the exercise of the power;
- (2) the duration of the power of attorney specified in the power of attorney has expired;
- (3) the person has actual knowledge of the death of the principal;
- (4) the person reasonably believes that the power of attorney is not valid under Indiana law and provides the attorney in fact with a written statement **not more than ten (10) business days after the refusal**, describing the reason that the power of attorney is not valid under Indiana law; or
- (5) the person reasonably believes that the power of attorney does not grant the attorney in fact with authority to perform the transaction requested and provides the attorney in fact with a written statement **not more than ten (10) business days after the refusal**, describing the reason the person believes the power of attorney is deficient under Indiana law.

(c) This section does not negate the liability a person would have to the principal or the attorney in fact under another form of power of attorney, under the common law, or otherwise.

SECTION 11. IC 32-17-13 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

Chapter 13. Liability of Nonprobate Transferees for Creditor Claims and Statutory Allowances

Sec. 1. (a) As used in this chapter, "nonprobate transfer" means a valid transfer, effective at death, by a transferor:

- (1) whose last domicile was in Indiana; and



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(2) who immediately before death had the power, acting alone, to prevent transfer of the property by revocation or withdrawal and:

- (A) use the property for the benefit of the transferor; or
- (B) apply the property to discharge claims against the transferor's probate estate.

The term does not include transfer of a survivorship interest in a tenancy by the entireties real estate, transfer of a life insurance policy or annuity, or payment of the death proceeds of a life insurance policy or annuity.

(b) With respect to a security described in IC 32-17-9, "nonprobate transfer" means a transfer on death resulting from a registration in beneficiary form by an owner whose last domicile was in Indiana.

(c) With respect to a nonprobate transfer involving a multiple party account, a nonprobate transfer occurs if the last domicile of the depositor whose interest is transferred under IC 32-17-11 was in Indiana.

Sec. 2. (a) Except as otherwise provided by statute, a transferee of a nonprobate transfer is subject to liability to a decedent's probate estate for:

- (1) allowed claims against the decedent's probate estate; and
- (2) statutory allowances to the decedent's spouse and children;

to the extent the decedent's probate estate is insufficient to satisfy those claims and allowances.

(b) The liability of the nonprobate transferee may not exceed the value of nonprobate transfers received or controlled by the nonprobate transferee.

(c) The liability of the nonprobate transferee does not include the net contributions of the nonprobate transferee.

Sec. 3. Nonprobate transferees are liable for the insufficiency described in section 2 of this chapter in the following order:

- (1) As provided in the decedent's will or other governing instrument.
- (2) To the extent of the value of the nonprobate transfer received or controlled by the trustee of trusts that can be amended, modified, or revoked by the decedent during the decedent's lifetime. If there is more than one (1) such trust, in proportion to the relative value of the trusts.
- (3) Other nonprobate transferees in proportion to the values received.

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Sec. 4. Unless otherwise provided by the trust instrument, interest of beneficiaries in all trusts incurring liabilities under this chapter shall abate as necessary to satisfy the liability as if all of the trust instruments were a single will and the interests were devised under it.

Sec. 5. (a) A provision made in an instrument may direct the apportionment of the liability among the nonprobate transferees taking under that or any other governing instrument.

(b) If a provision in an instrument conflicts with a provision in another instrument, the later provision prevails.

Sec. 6. Upon due notice to a nonprobate transferee, the liability imposed by this chapter is enforceable in proceedings in Indiana in the county where:

- (1)** the transfer occurred;
- (2)** the transferee is located; or
- (3)** the probate action is pending.

Sec. 7. (a) A proceeding under this chapter may not be commenced unless the personal representative of the decedent's estate has received a written demand for the proceeding from the surviving spouse or a surviving child, to the extent that statutory allowances are affected, or a creditor.

(b) If the personal representative declines or fails to commence a proceeding after demand, a person making demand may commence the proceeding in the name of the decedent's estate at the expense of the person making the demand and not of the estate.

(c) A personal representative who declines in good faith to commence a requested proceeding incurs no personal liability for declining.

Sec. 8. A proceeding under this chapter must be commenced not later than nine (9) months after the person's death, but a proceeding on behalf of a creditor whose claim was allowed after proceedings challenging disallowance of the claim may be commenced within sixty (60) days after final allowance of the claim.

Sec. 9. Unless written notice asserting that a decedent's probate estate is insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative, the following rules apply:

- (1)** Payment or delivery of assets by a financial institution, registrar, or another obligor to a nonprobate transferee under the terms of the governing instrument controlling the transfer releases the obligor from all claims for amounts paid or assets

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delivered.

(2) A trustee receiving or controlling a nonprobate transfer is released from liability under this section on any assets distributed to the trust's beneficiaries. Each beneficiary, to the extent of the distribution received, becomes liable for the amount of the trustee's liability attributable to that asset imposed by sections 2 and 3 of this chapter.

SECTION 12. IC 32-17-11-21.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 21.1. The liability of a surviving party, P.O.D. payee, or beneficiary for creditor claims and statutory allowances is determined under IC 32-17-13.**

SECTION 13. IC 32-17-9-12.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 12.1. The liability of a beneficiary for creditor claims and statutory allowances is determined under IC 32-17-13.**

SECTION 14. IC 34-30-2-136.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002] **Sec. 136.5. IC 32-17-13-7 (Concerning personal liability of a personal representative).**

SECTION 15. IC 32-17-11-21 IS REPEALED [EFFECTIVE JULY 1, 2002].

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Approved: _____

Governor of the State of Indiana

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